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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. 640

THE UNITED STATES OF AMERICA, APPELLANT

VS.

CAROLINE PRODUCTS COMPANY

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF ILLINOIS

FILED DECEMBER 16, 1937

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[Caption omitted.]

In United States District Court for the Southern District
of Illinois, Southern Division

Docket No. 3489

No. Pre. Pro. Howard L. Doyle, U. S. Attorney.

Indictment Filed June 19, 1935

The Grand Jurors of the United States of America, impaneled, sworn, and charged in the District Court of the United States of America, within and for said Southern Division of the Southern District aforesaid, at the term aforesaid, of the court aforesaid, in the year of our Lord Nineteen Hundred Thirty-five, and inquiring within and for said Southern Division of said Southern District, upon their oath present that Carolene Products Company, a corporation, on, to wit, the First day of December, in the year of our Lord Nineteen Hundred Thirty-four, at, to wit, Litchfield, in the County of Montgomery, in the State of Illinois, in the said Southern Division of the Southern District aforesaid, and within the jurisdiction of this court, did, then and there, wilfully, knowingly, fraudulently and unlawfully ship in interstate commerce from the said Litchfield, in the said County of Montgomery, in the said State of Illinois, in the said Southern Division of the Southern District aforesaid, to General Grocer Co. at the City of St. Louis, in the State of Missouri, over the roads and public highways of said State of Illinois and said State of Missouri, by motor truck, then and there owned and operated by Schmidt Trucking Service, a common carrier, a certain adulterated article of food injurious to the public health, to wit, certain filled milk, to wit, three hundred cases, each containing forty-eight, fourteen and one-half ounce cans of "Milnut," being then and there a product of condensed and concentrated skimmed milk, to which there had theretofore been added, and which there had theretofore been blended and compounded, a certain fat and oil other than milk fat, to wit, cocoanut oil and fat, so that the resulting product, to wit, the said "Milnut" then and there, to wit, at the time and place first aforesaid, was in imitation of and semblance of, to wit, milk, cream, skimmed milk, condensed milk, and concentrated milk, and the said filled milk, to wit, the said "Milnut" not then and there being a distinct proprietary food compound, not readily mistaken in taste for milk or cream, or for evaporated, condensed, or powdered milk or cream, and not being then and there a compound prepared and designed for feeding infants and young children, and customarily used on the order of a physician, and not being then and there packed in individual cans containing not more than sixteen and one-half ounces, and bearing a label in bold type, that the content is to be used only for said purpose, and not being then

and there shipped in interstate commerce as aforesaid, exclusively to physicians, wholesale and retail druggists, orphan asylums, child welfare associations, hospitals, and similar institutions, and generally disposed of by them, which said shipment in interstate commerce, in manner and form aforesaid, of the said filled milk, to wit, the said "Milnut," was then and there unlawful and prohibited, and in violation of the Act of Congress, approved March 4, 1933, entitled, "An Act to prohibit the shipment of filled milk in interstate or foreign commerce;" contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

5 Second Count:

And the Grand Jurors aforesaid, inquiring as aforesaid, upon their oath aforesaid, do further present that Carolene Products Company, a corporation, on, to wit, the Twenty-seventh day of December, in the year of our Lord Nineteen Hundred Thirty-four, at, to wit, Litchfield, in the County of Montgomery, in the State of Illinois, in the said Southern Division of the Southern District aforesaid, and within the jurisdiction of this court, did, then and there, wilfully, knowingly, fraudulently and unlawfully deliver to Buske Lanes, Inc., a corporation, for shipment in interstate commerce from the said Litchfield, in the said County of Montgomery, in the said State of Illinois, in the said Southern Division of the Southern District aforesaid, to N. Comensky Gro. Co., at the City of St. Louis, in the State of Missouri, a certain adulterated food product injurious to the public health, to wit, certain filled milk, to wit, fifty cases, each case containing forty-eight, fourteen and one-half ounce cans of "Carolene," a product of condensed and concentrated skimmed milk, to which there had theretofore been added, and with which there had theretofore been blended and compounded, a certain fat and oil other than milk fat, to wit, a cocoanut oil and cocoanut fat, so that the resulting product, to wit, the said "Carolene," then and there, to wit, at the time and place first aforesaid, was in imitation of and semblance of, to wit, milk, cream, skimmed milk, condensed milk, and concentrated milk, the said filled milk, to wit, the said "Carolene" not then and there being a distinct proprietary food compound not readily mistaken in taste for milk or cream, or for evaporated, condensed, or powdered milk or cream, and not being then and there a compound prepared and designed for feeding infants and young children, and customarily used on the order of physicians, and not being then and there packed in individual cans containing not more than sixteen and one-half ounces, and bearing a label in bold type, that the content is to be used only for said purpose, and not being then and there shipped in interstate commerce in manner and form aforesaid, exclusively to physicians, wholesale and retail druggists, orphan asylums, child welfare associations, and generally disposed of by them, which said delivery for shipment in interstate commerce as aforesaid of the said filled milk, to wit, the said

"Carolene" was then and there unlawful and prohibited and in violation of the Act of Congress, approved March 4, 1933, entitled, "An Act to prohibit the shipment of filled milk in interstate or foreign commerce"; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

HOWARD L. DOYLE,
United States Attorney.

(Endorsed:) A True Bill. W. E. Deming, Foreman.
[File endorsement omitted.]

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In United States District Court

Criminal No. 3489

UNITED STATES

vs.

CAROLENE PRODUCTS COMPANY

Motion to quash indictment

Filed June 26, 1935

Now comes the Carolene Products Company, defendant in the above entitled cause, by its attorney, George N. Murdock, and moves the court to quash each and every count of said indictment on the following grounds:

1. That the same matters and the same cause of action has heretofore been before and been considered by this court in the form of an information filed in this court June 20, 1931, No. 2234 Criminal, to which information a demurrer was filed admitting the facts as set forth in said information, but charging that the things therein set out were not sufficient in law to require defendant to make an answer thereto because—

(a) Said Act under which said information was brought was unconstitutional and void in that it deprived defendant of its property without due process of law, in violation of the 5th Amendment of the Constitution of the United States.

(b) That said statute was unconstitutional and void in that the legislative branch had assumed and usurped the powers of the judicial branch of the government in violation of the Constitution of the United States.

(c) In that said statute was unconstitutional and void in that it was an unjust and arbitrary discrimination and classification against the product manufactured by defendant.

(d) In that said statute denied defendant equal protection of the laws of the United States.